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*Attorneys for Defendants Miguel Flores-Nava,
Jennifer Nash, and Sheryl Foster*

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

FRANCIS JOHNSON,

Plaintiff,

v.
STATE OF NEVADA, et al.,

Defendants.

Case No. 2:14-cv-01425-GMN-PAL

**DEFENDANT FOSTER'S MOTION TO
EXCUSE HER PARTICIPATION AT THE
SETTLEMENT CONFERENCE**

**Settlement conference scheduled for
October 21, 2016**

Defendant Sheryl Foster, by and through counsel, Adam Paul Laxalt, Nevada Attorney General, Jared M. Frost, Senior Deputy Attorney General, and Frank A. Toddre II, Deputy Attorney General, hereby submit this motion to excuse Defendant Foster's participation at the settlement conference scheduled for October 21, 2016. The motion is made and based on the following points and authorities, the attached declaration, the pleadings and papers on file herein, and any other evidence the Court deems appropriate to consider.

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I. PROCEDURAL HISTORY

This is an inmate civil rights action filed pursuant to 42 U.S.C. section 1983. See ECF No. 19 (Plaintiff's amended complaint). On December 19, 2014, this Court screened Plaintiff's Complaint. See ECF No. 18. Pursuant to the Court's screening order, Plaintiff was permitted to proceed on one count of retaliation against Defendants Flores-Nava, Pharris, Nash, and Foster. *Id.* at 6.

On April 14, 2016, Plaintiff filed a motion for summary judgment. ECF No. 53. On April 29, 2016, Defendants filed a motion for summary judgment. ECF No. 56. On June 15, 2016, the Court scheduled a settlement conference for August 19, 2016. ECF No. 66. On July 14, 2016, the Court rescheduled the settlement pursuant to Defendants' request for October 21, 2016. ECF No. 71. This timely motion follows. See ECF No. 66 at 2 ("A request for an exception to the above attendance requirements must be filed and served at least one week prior to the settlement conference.").

II. ARGUMENT

Defendant Foster respectfully requests that she be excused from participating at the settlement conference set for October 21, 2016. Defendant Foster submits that there is good cause to excuse her based on the following considerations. First, Defendant Foster's only involvement in this matter relates to her role as a grievance responder. Defendant Foster responded to thousands of individual grievances in her former capacity as Deputy Director for the Nevada Department of Corrections, was not personally involved in the cell search that is the subject of this lawsuit, and has no independent recollection of responding to Plaintiff's grievance. Exhibit 1 (Declaration of Sheryl Foster). Consequently, it is unlikely that Defendant Foster has information that would assist the Court in facilitating settlement discussions between the parties. Second, Defendant Foster currently resides in Kingman, Arizona, at least five (5) nights a week, and would be required to travel to Las Vegas from Arizona and take leave from her job to attend the conference. *Id.* Based on the foregoing, Defendant Foster respectfully requests that she be excused from participating at the settlement conference.

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1 **III. CONCLUSION**

2 The Court should grant Defendant Foster's motion to excuse her participation at the
3 upcoming settlement conference.

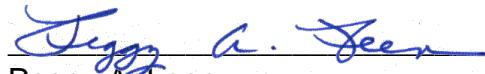
4 DATED this 30th day of August, 2016.

5 ADAM PAUL LAXALT
6 Nevada Attorney General

7 By: /s/ Jared M. Frost
8 JARED M. FROST
9 Senior Deputy Attorney General
Bureau of Litigation
Public Safety Division

10 *Attorneys for Defendants*

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12 IT IS SO ORDERED this 1st day
13 of September, 2016.

14 
15 Peggy A. Leen
16 United States Magistrate Judge

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the State of Nevada, Office of the Attorney General, and that on the 30th day of August, 2016, I served the foregoing, **DEFENDANT FOSTER'S MOTION TO EXCUSE HER PARTICIPATION AT THE SETTLEMENT CONFERENCE**, by causing a true and correct copy thereof to be filed with the Clerk of the Court, using the electronic filing system, and by causing a true and correct copy thereof to be delivered to the Department of General Services, for mailing at Las Vegas, Nevada, addressed to the following:

Francis Johnson, #45800
Southern Desert Correctional Center
P.O. Box 208
Indian Springs, Nevada 89070
Plaintiff, Pro Se

/s/ Carol A. Knight
CAROL A. KNIGHT
An employee of:
STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

EXHIBIT 1

Declaration of Sheryl Foster

EXHIBIT 1

DECLARATION OF SHERYL FOSTER

I, SHERYL FOSTER, hereby declare based on personal knowledge and/or information and belief, that the following assertions are true.

1. I am currently employed in Kingman, Arizona, and reside in Kingman at least five (5) nights a week.

2. I was formerly employed as a Deputy Director for the Nevada Department of Corrections (NDOC) from September 2014 to January 2016.

3. I am a named Defendant in the matter of *Johnson v. State of Nevada*, USDC Case No. 2:14-cv-1425. I am informed that a settlement conference has been scheduled for October 21, 2016, and that this Court's order requires all Defendants to attend in person.

4. I make this declaration in support of my request to be excused from participating in the October 2016 settlement conference. Attending the conference would require me to travel to Las Vegas from Arizona and take leave from my job. In addition, I was not personally involved in the cell search that is the subject of the lawsuit. Furthermore, I responded to thousands of inmate grievances in my former capacity as Deputy Director and have no independent recollection of responding to Mr. Johnson's grievance.

Pursuant to 28 U.S.C. section 1746 Declarant certifies, under penalty of perjury, that the foregoing is true and correct.

DATED this 25th day of August, 2016.



SHERYL FOSTER